

April 28, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Opposition to AT&T Broadband/Comcast Merger

Dear Ms. Dortch:

The BEN Asset Group, Inc., an Indiana corporation, and its subsidiary, the Black Education Network, Inc., formally set forth their opposition to the merger between AT&T Broadband and Comcast.

Black Education Network, Inc. is the corporate entity for the Black Education Network, a programming service that provides interesting informational and educational programming from a Black perspective, collectively referred to hereafter as "BEN." BEN objects to the proposed merger between AT&T Broadband ("AT&T") and Comcast ("the merger") on the following grounds.

The proposed merger fails to adequately consider and provide for minority participation in ownership of cable systems in the United States. In practice, AT&T has actually prevented minority ownership of cable systems by refusing to sell any of the blocks of cable systems it has bid to minority owned purchasers even though such purchasers had documented financing and were the highest bidders. Changing the rules and requirements in the middle of the bidding process is but one example of what we believe to be a constant pattern of "selective bidding" and circumventing the rules and regulations.

Further, AT&T has made documented exclusionary statements that it would not sell large blocks of cable systems to any entity that did not already own large cable systems despite their ability to purchase them. Their refusal to provide a level playing field effectively excludes any entry by minority owned companies into ownership of large blocks of cable systems, and deprives their shareholders of tens of millions of dollars. This makes any merger that allows AT&T to expand their exclusionary policy all the more dangerous. Through their business practices they show that they so want to exclude minorities from "moving into the neighborhood" that they are willing to take tens of millions of dollars less in value to their shareholders in order not to sell "their house"

to Blacks. This means that certain minority businesses will not have equal access to distribution on the publicly controlled airways and already constitutes monopolistic practices on the part of AT&T. If this merger is allowed to occur, the much larger merged entity will ensure that there will be no minority ownership or participation in such a strategic business of programming and distribution for long into the foreseeable future. We believe the merger between AT&T Broadband and Comcast threatens shareholder value and does permanent damage to the free market system so avidly supported by the FCC.

The proposed merger fails to adequately consider and provide for consumers' access to diversity of content. The fact that Black-owned national programming services cannot get channel space is a testament to "big is not always better". The only time it seems that they consider any new Black owned services is when they are buying or merging systems. They agree before the merger then renege on deals after the merger. Our companies were the direct recipients of this inappropriate business practice by AT&T. We have documentation that AT&T was in the midst of negotiations with BEN for carriage on their systems during the AT&T/MediaOne merger and once the merger was approved AT&T withdrew more favorable terms of agreement and imposed unconscionable terms and refused to bind itself to carry our services to even one of its subscribers.

Many of the cities that AT&T Broadband serves, and will serve if a merger with Comcast is approved, have large populations of African Americans. Neither AT&T Broadband, nor Comcast, provides a national minority-owned programming service developing educational and informational content of significant interest to African-Americans. The access channels that AT&T Broadband and Comcast provide to local municipalities in exchange for local monopolies do not come close to fulfill the information and entertainment gap of national commercial programming services.

African Americans across this country have for years voiced concerns regarding the lack of programming services geared to their needs and tastes. According to Nielsen Media Research's website, the top ten programming choices of African Americans households differ significantly than choices from other households. The only program on both lists is *NFL Monday Night Football*. It is a shame that whenever the major multiple system operators are approached for national carriage on their systems by potential Black-owned and operated programming services, they claim they do not have space. Yet they are continually rolling out new programming services.

While private companies own the equipment and have the resources to deliver programming signals to the ultimate consumer, the American public owns the airwaves. Large multiple system operators have been awarded licenses to operate both nationally and locally to the benefit of the public. However, large segments of the audience they are required to benefit go unserved. We understand and appreciate the fact that

multiple system operators operate their systems for profit. We also insist that these operators who have received licenses to operate have a duty to the public they serve. Unfortunately, as large operators such as AT&T Broadband and Comcast get larger, they have become the purveyors of choice while ignoring their duty to the public.

In sum, allowing this merger to proceed means that certain minority businesses will not have equal access to distribution on the publicly controlled airways and rewards the immoral and monopolistic practices of AT&T Broadband. The merger would create a larger and different entity making it almost impossible to identify, track and therefore address the wrongdoings of this company. The much larger merged entity will also undoubtedly ensure the exclusion of minority-owned and minority-controlled entities from the programming and distribution for long into the foreseeable future. The lack of fiduciary and moral values on the part of AT&T Broadband's leadership must be confronted by those charged to protect the public's trust and assets. Unless the Federal Communications Commission and other government agencies begin to address these issues, no market condition can correct the damage of such exclusion. Accordingly, we have chosen to file this objection.

Sincerely,
Stephen E. Davis
President & CEO

c: Michele Clark Jenkins, Board of Directors, BEN Asset Group, Inc.
Carlton A. Brown, Board of Directors, BEN Asset Group, Inc
Regina A. Illery, Board of Directors, BEN Asset Group, Inc
Linda D. Bernard, Board of Directors, BEN Asset Group, Inc
Robert K. Cambridge, Board of Directors, BEN Asset Group, Inc
Adonis E. Hoffman, Board of Directors, BEN Asset Group, Inc
Rick S. Lassiter, Board of Directors, BEN Asset Group, Inc
Duane H. Livingston, Board of Directors, BEN Asset Group, Inc
Dr. James E. Lyons, Sr., Board of Directors, BEN Asset Group, Inc
Hon. Chris Owens, Board of Directors, BEN Asset Group, Inc
Wesley D. Ratcliff, Board of Directors, BEN Asset Group, Inc
Joshua I. Smith, Board of Directors, BEN Asset Group, Inc
Commissioner Michael K. Powell, Chairman, FCC
Members, Congressional Black Caucus
Kweisi Mfume, President NAACP
Hugh Price, President, National Urban League